



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MARY F. McTIGUE
DIRECTOR

December 18, 1992
AO-92-32

Barry L. Del Castilho
Town Manager
Town Hall
4 Boltwood Avenue
Amherst, MA 01002-2351

Re: Public Employee

Dear Mr. Del Castilho:

This letter is in response to your May 27, 1992 request for an advisory opinion regarding the use of public resources in support of a ballot question. I apologize for the delay in my response.

You stated that several members of the Town Hall Renovations Committee ("Committee") complained that the Board of Selectmen ("Board") had not taken a public position in support of the referendum for town hall renovations. As town manager you drafted a statement which the Board could adopt in support of a Proposition 2 1/2 referendum. The Board subsequently adopted an amended version of your original draft. You also stated that you did not work on this statement during regular working hours, however, it was drafted and photocopied with municipal equipment. You ask whether this process, which occurs as a matter of course, violates M.G.L. c.55.

This Office does not ordinarily address, in advisory opinions, issues which have already occurred. However, since this practice of drafting statements on various matters of public policy for adoption by the Board has become standard procedure, and is likely to be repeated by you and others, we believe an advisory opinion is the appropriate forum to review this matter to guide future action.

The Supreme Judicial Court addressed issues regarding the use of municipal funds to support a referendum question in Anderson v. City of Boston, 376 Mass. 178 (1978). The court interpreted M.G.L. c.55 as generally prohibiting the expenditure of municipal funds to influence a referendum question. The court held that M.G.L. c.55 was a comprehensive campaign finance statute and stated:

If the Legislature had expected that municipalities would engage in such activities or intended that they could, M.G.L. c.55 would have regulated those activities as well. Id. at 186.

In Anderson the prohibited expenditure was in the form of providing telephones and office space to volunteers working to effect the outcome of a state-wide ballot question. The court did, however, more specifically consider the permissible roles for policy-making officials, and stated with apparent approval:

At oral argument, the plaintiffs conceded that the mayor and persons in relevant policy-making positions in city government are free to act and speak out in support of the classification amendment. Id. at 199 (emphasis added).

As town manager, it is the opinion of this Office that you are among the "persons in relevant policy-making positions" who may engage in limited activities relative to a ballot question. Therefore, as we recently stated in Interpretative Bulletin, OCPF-IB-92-02, a copy of which is enclosed for your information:

[you] may act and speak out in your official capacity and during work hours if in doing so [you] are acting within the scope of [your] official responsibilities (emphasis added). OCPF-IB-92-02, page 3.

In OCPF's opinion, it is appropriate for a town manager to analyze and/or formulate a public position on a matter within his or the Board's official responsibility. This may include the drafting of a statement in support of or opposition to a Proposition 2 1/2 debt exclusion referendum for town hall renovations at the request of the Committee or, indeed, member of the Board for consideration by the Board.¹

Because of our view of this matter, the statement could have been prepared either during work hours using the limited town equipment and staff needed to prepare a statement for the Board's consideration e.g. personal computer, copying machine and paper. To argue that a Board and/or a town manager may take a position on a ballot question but not utilize limited public resources needed to draft such a statement provides a hollow right. However, the right to use limited public resources to take a position on a ballot question does not include the right to promote that position using public resources. As the Anderson court stated:

1. The drafting of such a statement by a town manager under these circumstances does not necessarily imply agreement by the manager or the Board with the proposed statement. Rather, the statement merely provides the Board an opportunity to take a public position on a particular matter as a matter of policy. The Board could, of course, modify, approve or reject the particular statement.

We thus construe G.L. c.55 as preempting any right which a municipality might otherwise have to appropriate funds for the purpose of influencing the result on a referendum question to be submitted to the people at a State election. Anderson, 376 Mass. at 186.

This prohibition would clearly preclude expending public funds or resources to distribute the Board's statements. If members of the Board or other residents wish to distribute the statement the cost of such publication must be borne privately in compliance with the campaign finance laws.

For your information, I note that if public funds or resources are spent to promote or oppose a ballot question at the local level, such action constitutes an expenditure or contribution and triggers certain reporting and restitution procedures. Specifically, M.G.L. c.55, s.22A provides, in part, that:

The treasurer of any city, town or other governmental unit which has given, paid, expended or contributed . . . any money or valuable thing in order to influence or affect the vote on any question submitted to the voters of the any city or town or any part of any city or town, shall file reports with the clerk of such city or town setting forth the amount or value of every gift, payment, expenditure or contribution.

Section 22A also provides the city or town clerk with the power to require restitution for "public funds which have been . . . spent contrary to law by public officials."

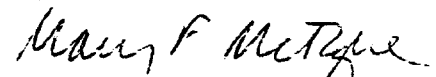
For the above reasons it is this Office's opinion that a town manager may use the limited public resources required to prepare a statement supporting or opposing a ballot question for consideration by the town's elected representatives, without violating M.G.L. c.55.²

This opinion has been rendered solely on the basis of representations made in your letter and assumptions set forth in the opinion, and solely in the context of M.G.L. c.55.

2. Nothing in M.G.L. c.55 precludes a town manager or a member of the Board from preparing statements relative to ballot questions on his or her own time using private funds and equipment provided compliance with the registration, reporting and other relevant requirements of the campaign finance law.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,

A handwritten signature in cursive script, reading "Mary F. McTigue".

Mary F. McTigue
Director

MFM/cp
Enclosure